

**State of California**  
**DEPARTMENT OF INDUSTRIAL RELATIONS**  
**Division of Workers' Compensation**

**SECOND NOTICE OF MODIFICATION TO TEXT OF  
PROPOSED REGULATIONS**

**Subject Matter of Regulations: Return to Work**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS**  
**SECTIONS 10001 – 10005, 10133.53, 10133.55**

**NOTICE IS HEREBY GIVEN** that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 59, 133, and 4603.5, proposes to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

Section 10001	Definitions;
Section 10002	Offer of Work; Adjustment of Permanent Disability Payments;
Section 10003	Form DWC AD 10003 Notice of Offer of Work;
Section 10133.53	Form DWC-AD 10133.53 "Notice of Offer of Modified or Alternative Work for Injuries Occurring on or after 1/1/04"
Section 10133.55	Form DWC-AD 10133.55 "Request for Dispute Resolution before the Administrative Director"

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION  
OF WRITTEN COMMENTS**

Members of the public are invited to present written comments regarding these proposed modifications. **Only comments directly concerning the proposed modifications to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Maureen Gray, Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
Post Office Box 420603  
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than **5:00 p.m. on Wednesday, April 19, 2006**. Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail), using the following e-mail address: [dwcrules@hq.dir.ca.gov](mailto:dwcrules@hq.dir.ca.gov).

## AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text and modified text with modifications clearly indicated, and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17<sup>th</sup> Floor, Oakland, California.

Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

The specific modifications proposed include changes to the text of the proposed amendments Title 8, California Code of Regulations:

Section 10001	Definitions;
Section 10002	Offer of Work; Adjustment of Permanent Disability Payments;
Section 10003	Form DWC AD 10003 Notice of Offer of Work;
Section 10133.53	Form DWC-AD 10133.53 "Notice of Offer of Modified or Alternative Work for Injuries Occurring on or after 1/1/04"
Section 10133.55	Form DWC-AD 10133.55 "Request for Dispute Resolution before the Administrative Director"

## DOCUMENTS SUPPORTING THE RULEMAKING FILE

- Comments from various interested parties concerning the regulations have been added to the rulemaking file.

## FORMAT OF PROPOSED MODIFICATIONS

### Proposed Text Noticed for 45-Day Comment Period:

The text is indicated by underlining, thus: underlined language.

### Proposed Text Noticed for 15-Day Comment Period on Modified Text:

Deletions from the regulatory text, as proposed in October 2005, are indicated by double strike-through, thus: ~~deleted language~~.

Additions to the regulatory text, as proposed in October 2005, are indicated by a double underline, thus: added language.

### Proposed Text Noticed for This Second 15-Day Comment Period on Modified Text:

Deletions from the regulatory text, as proposed in April 2006, are indicated by double strike-through in italics, thus: ~~*deleted language*~~.

Additions to the regulatory text, as proposed in April 2006, are indicated by double underline in italics, thus: *added language*.

## SUMMARY OF PROPOSED CHANGES

### Modifications to Section 10001

### Definitions; subdivisions (a) “Alternative work” and (f) “Seasonal Work”

In subdivision (a), the definition of “Alternative work” was changed to reflect that alternative work may be offered by either the employer who employed the injured worker at the time of injury, or by another employer, where the previous employment was on a seasonal basis, as a daily hire, or as a project hire. The proposed text states:

- (a) *“Alternative work” means work (1) offered ~~by the~~ either by the employer who employed the injured worker at the time of injury, or by another employer where the previous employment was on a seasonal basis, as a daily hire, or as a project hire, (2) that the employee has the ability to perform, (3) that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and (4) that is located within a reasonable commuting distance of the employee's residence at the time of injury.*

Previously, section 10002 (g) was added to address the situation where the injured employee is a seasonal worker. The language is based on the holding of *Henry v. WCAB* (1998) 68 Cal.App.4th 981. Therefore, section (f) was added to 10001 to define “Seasonal work.” The proposed text states:

- (f) *“Seasonal Work” means the employee’s usual occupation or the position in which the employee was engaged at the time of injury and that offers wages and compensation equivalent to those paid to the employee at the time of injury in which the employee regularly works as a daily hire, a project hire, or an annual season hire, and is located within a reasonable commuting distance of the employee’s residence at the time of injury.*

### Modifications to Section 10002

### Offer of Work; Adjustment of Permanent Disability Payments; subdivisions (g) (1) (2) (3) and (4)

Changes were made to Section 10002 (g) to address the situation where the injured employee is a seasonal worker, a daily hire, or a project hire. The proposed text states:

*(g) If the employer offers regular, modified, or alternative seasonal work to the employee, the offer shall meet the following requirements:*

*(1) the employee was hired on a seasonal basis, as a daily hire, or as a project hire prior to injury;*

*(2) the offer of regular, modified or alternative seasonal work is on a similar seasonal basis of reasonably similar wages, hours and working conditions to the employee's*

previous employment, and where the previous employment was on a seasonal basis, as a daily hire, or as a project hire, the one year requirement may be satisfied by cumulative periods of seasonal work;

(3) the work must commence within 12 months of the date of the offer; and

~~(3)~~ (4) The offer meets the conditions set forth in this section.

## Modifications to Section 10003

## Form DWC AD 10003 Notice of Offer of Work;

At page 1 of Form 10003, the language was changed to clarify that the position is expected to last for a total of at least 12 months of work. Additionally, a confirmation that the claims administrator verified with the employer the facts concerning the job offer was added. The proposed text states:

This position is expected to last ~~for a total of~~ at least 12 months of work. If this position does not last for a total of at least 12 months of work, you may be entitled to an increase in your permanent disability benefit payments.

This position provides wages and compensation of \$ \_\_\_\_\_, that are equivalent to the wages and compensation paid to you at the time of your injury.

I, \_\_\_\_\_, have verified with the employer the facts concerning this job offer.

\_\_\_\_\_ (Name of Claims Administrator)

At page 2 of Form 10003, a clarifying sentence explaining what the parties can do in the event of a dispute regarding the offer of regular work was added. The proposed text states:

If either party has a dispute regarding the offer of regular work, that party may file a Declaration of Readiness with the local district office of the Workers' Compensation Appeals Board (WCAB).

Finally, on page 3 of Form 10003, reference to the year the Proof of Service was signed by prompting the first two numbers of the year [20\_\_\_\_] was omitted, such that, the person filling out the form can write in the year. The proposed text states:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at

\_\_\_\_\_ on \_\_\_\_\_.

## Modifications to Section 10133.53

## Form DWC-AD 10133.53 "Notice of Offer of Modified or Alternative Work for Injuries Occurring on or after 1/1/04"

Section 10002 (b) (3), of the proposed Return to Work regulations refers to Form DWC-AD 10133.53 (Section 10133.53) from the Supplemental Job Displacement Benefit regulations. Form DWC-AD 10133.53 has been modified (1) to correct the zip code on page 1 of the Form from 94102-3660 to 94142-0603; (2) to add a Proof of Service at page 3 of the form; and (3) to update the date of the form from (08/05) to (05/06) at the bottom of pages 1-3 of the Form. The proposed text states:

### Changes from (1):

(A.D., "SJDB," Division of Workers' Compensation, P.O. Box 420603, S. F., CA ~~94102-3660~~ 94142-0603)

### Changes from (2):

### **Proof of Service By Mail**

I am a citizen of the United States and a resident of the County of \_\_\_\_\_. I am over the age of eighteen years and not a party to the within matter.

My business address is:

\_\_\_\_\_  
\_\_\_\_\_

On \_\_\_\_\_, I served the **Notice of Offer of Modified or Alternative Work** on the parties listed below by placing a true copy thereof enclosed in a sealed envelope with postage fully prepaid, and thereafter deposited in the U. S. Mail at the place so addressed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_.

Signature: \_\_\_\_\_

Copies Served On:

Changes from (3):

MANDATORY FORM (Page 1 of 2 3)  
STATE OF CALIFORNIA  
(~~08/05~~) (05/06)

MANDATORY FORM (Page 2 of 2 3)  
STATE OF CALIFORNIA  
(~~08/05~~) (05/06)

MANDATORY FORM (Page 3 of 2 3)  
STATE OF CALIFORNIA  
(~~08/05~~) (05/06)

**Modifications to Section 10133.55**

**Form DWC-AD 10133.55 “Request for Dispute Resolution before the Administrative Director”**

Section 10003, Form DWC-AD 10003 Notice of Offer of Work, of the proposed Return to Work regulations refers to dispute resolution. The dispute resolution form is found at DWC-AD 10133.55 (Section 10133.53) in the Supplemental Job Displacement Benefit regulations. Form DWC-AD 10133.55 had been modified (1) to correct the zip code from 94102-3660 to 94142-0603 and (2) to correct the date of the Form from (08/05) to (05/06). The proposed text states:

Summary of Parties' Informal Efforts to Resolve this Dispute		Proof of Service: I declare under penalty of perjury under the laws of the State of California that on the date written below, I mailed a copy of this request with a copy of any documents included with this request to the following parties at the following addresses:	
		Administrative Director, (SJDB), Division of Workers' Compensation, P.O. Box 420603, San Francisco, CA <del>94102-3660</del> <u>94142-0603</u>	
Name of Requester	Date	Signature	Date

(Mandatory Form DWC-AD 10133.55 ~~08/05~~ 05/06)